FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No. 183/2007
(Smt.Shakuntalabai Bapurao Wakekar **VERSUS** Haribhau Kondbaji Bhonde **)**

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri Walthare, Advocate for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 13th August, 2007.

Heard the learned counsel for the appellant.

The appellant is the original plaintiff. A suit was filed by the plaintiff for declaration, permanent injunction and possession of the land which, according to the plaintiff, was encroached by the defendant.

The defendant denied the claim of the plaintiff.

Both the Courts have concurrently held that the plaintiff failed to prove that the defendant had encroached upon the suit land which was shown by the letters in the plaint map. The Courts further held that the plaintiff further failed to prove that the

defendant made illegal construction on the land encroached by him. The Courts then held that the plaintiff was not entitled to the relief of declaration as he had failed to prove his ownership over the suit property. The Court consequently dismissed the suit of the plaintiff.

The first appellate Court upheld the findings recorded by the trial Court.

The learned counsel for the appellant submitted that the appellate Court was not justified in rejecting the application filed by the plaintiff/ appellant for producing additional evidence under Order 40 Rule 27 of the Code of Civil Procedure. He submitted that the Gram Panchayat Certificate which the plaintiff desired to produce before the appellate Court could throw light on the ownership of the plaintiff over the suit property and the encroachment by the defendant. It is conspicuous to note that the suit was filed by the plaintiff in the year 1997 and the

certificate was issued by the Gram Panchayat on the application made by the plaintiff in the year 2000. Moreover, no ground has been made by the plaintiff for belatedly filing an application under Order 41 Rule 27 of the Code of Civil Procedure at the appellate stage.

The findings recorded by both the Courts are pure findings of facts based on an appreciation of the material evidence on record. They do not give rise to any substantial question of law. The second appeal is, therefore, dismissed with no order as to costs.

JUDGE

APTE